

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**AUG 02 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

ENOCH KING JARRETT,

Petitioner - Appellant,

v.

BILL LOCKYER, Attorney General,  
Attorney General for the State of  
California; et al.,

Respondents - Appellees.

No. 05-56260

D.C. No. CV-03-01495-MMM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Margaret M. Morrow, District Judge, Presiding

Argued and Submitted June 8, 2006  
Pasadena, California

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

Appellant Enoch King Jarrett appeals the district court's denial of his petition for habeas relief from his California state conviction on one count of attempting to commit a lewd act upon a child, seven counts of attempting to send

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

harmful matter to a minor over the internet, and one count of attempting to send harmful matter to a minor over the telephone. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we affirm.

We do not approve of or endorse the procedure of allowing jurors to take graphic, pornographic pieces of evidence home with them during the course of a criminal trial. We also, however, cannot say the California Court of Appeal, in holding that defense counsel's assent to this procedure waived appellant's claims that his constitutional rights were violated, issued a "decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). Generally, "[t]he most basic rights of criminal defendants are . . . subject to waiver." *Peretz v. United States*, 501 U.S. 923, 936 (1991). In certain cases structural error may bar waiver, *see id.* at 937, but these constitute a "very limited class of cases." *Neder v. United States*, 527 U.S. 1, 8 (1999).

Appellant has not cited any Supreme Court opinion holding that it is constitutional error for the trial court, with the assent of defense counsel, to permit at-home perusal of exhibits by jurors. Moreover, counsel may have assented to this procedure to advance the defendant's position that he thought his

correspondent was not a minor. Any harms arising therefrom are distinguishable from the set of harms that constitute structural error. *See id.*

**AFFIRMED.**